



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Cadott Auto Sales

Case No.: TR-00-0002

FINAL DECISION

On December 21, 1999, Maryann Nichols, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Cadott Auto Sales (Dealer). The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated February 11, 2000, the Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The parties were given until March 1, 2000, to file any additional documents or information that they wished to have the ALJ consider in issuing the preliminary determination. The Dealer filed a letter with additional documents objecting to the claim on February 17, 2000. A Preliminary Determination based on the documentation contained in the file and required by sec. Trans 140.26(4)(a), Wis. Adm. Code, was issued on April 12, 2000. The Dealer filed an objection to the Preliminary Determination pursuant to sec. Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under sec. Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on July 13, 2000 in Eau Claire, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Maryann Nichols
27653 270th Avenue
Holcombe, WI 54745

Cadott Auto Sales, by

Attorney Thomas Starr
615 Murry Street
Boyd, WI 54726-9059

Capitol Indemnity Corporation
P. O. Box 5900
Madison, WI 53705-0900

As a preliminary issue, in his objections to the Preliminary Determination issued in this matter, the Dealer challenged the authority of the Department of Transportation or the Division of Hearings and Appeals to adjudicate this claim. The Dealer correctly argues that nothing in sec. 218.01(2)(bb), Stats., the statutory section requiring dealers to provide and maintain a surety bond, expressly gives the Department of Transportation or the Division of Hearings and Appeals authority to adjudicate contested claims. However, the Department of Transportation has promulgated Ch. Trans 140, Wis. Adm. Code, setting forth the procedure for handling bond claims. The Department of Transportation subsequently contracted with the Division of Hearings and Appeals to conduct hearings under this chapter. Although sec. 218.01(2)(bb), Stats., does not expressly give the Department of Transportation authority to adjudicate contested bond claims, nothing in this section or any other statute prohibits the Department of Transportation from adjudicating these claims. Chapter Trans 140, Wis. Adm. Code, is not contrary to any statutory provision and is presumed to be a valid exercise of the Department of Transportation's authority.

There is no reported case law affirming the Department of Transportation's authority to adjudicate these claims; however, there is at least one circuit court decision reviewing a decision issued pursuant to Ch. Trans 140, Wis. Adm. Code. The case is Universal Underwriters Insurance Company v. DOT, Dane County Case No. 98-CV-1475. It does not appear from the decision that the Department of Transportation's authority to adjudicate bond claims was challenged in this case. However, the court did affirm the Department of Transportation's determination, thus, at least implicitly, recognizing the Department of Transportation's authority to hear and decide these claims. The Division of Hearings and Appeals has authority to adjudicate this claim.

The Preliminary Determination issued in this matter found that the Dealer did disclose on the Wisconsin Buyers Guide that the vehicle's title was branded as "Repaired Salvage" as the result of collision damage it had sustained but failed to disclose the existence of corrective welds or other defects to the automobile in violation of sec. Trans 139.04(4), Wis. Adm. Code. (As discussed in the Preliminary Determination, after Ms. Nichols purchased the vehicle from the Dealer she had it inspected by Southworth Chevrolet. Southworth Chevrolet gave Ms. Nichols a list of problems they discovered on the vehicle. Ms. Nichols attached a copy of this list to the complaint she filed against the Dealer (Ex. 5). However, at the hearing, Ms. Nichols testified that the only problem she has with the vehicle is a vibration noise in the rear end.) At the hearing, the Dealer presented the testimony of Jerry Brenner, the person who repaired the collision damage to the vehicle. Mr. Brenner testified that the damage was primarily limited to the right front of the vehicle and the only welds he made were to replace the radiator supports. Mr. Brenner testified that he did not make any corrective welds to the strut tower, floor pan or structural portion of the unibody of the vehicle.

Mr. Brenner's testimony was supported by the testimony of Roland Zerbian, the automobile dealer who purchased this vehicle as a salvage vehicle and had it repaired, and of Arnold Nitz, a mechanic who has a shop at the Dealer's facilities. Mr. Zerbian testified that he purchased the parts necessary to repair the vehicle and that the damage to the vehicle was limited to the right front portion of the vehicle. Mr. Nitz serviced the vehicle for the person who purchased the vehicle from Roland Zerbian after the collision damage had been repaired and also made the repairs to the exhaust system and replaced the front wheel bearings after Ms. Nichols purchased the vehicle from the Dealer. Mr. Nitz testified that the only corrective welds he observed on the vehicle were on the radiator supports. He did not notice that the unibody was bent or had had any corrective welds. Mr. Nitz also testified that he was not aware of any of the problems listed by Southworth Chevrolet other than the fact that the radiator supports were welded.

Based on the evidence at the hearing, the Dealer did not fail to disclose the existence of corrective welds or other defects to the automobile as required by sec. Trans 139.04(4), Wis. Adm. Code. The Final Decision in this matter is amended accordingly. The other violation found in the Preliminary Determination was that the Dealer failed to disclose that the manufacturer warranty for the subject vehicle had been cancelled due to the vehicle's salvage history. The Wisconsin Buyers Guide indicates that the vehicle was sold "AS IS—NO WARRANTY." However, the Dealer did not also check the box on the Wisconsin Buyers Guide which expressly states that the manufacturer warranty was "cancelled due to salvage or other vehicle history." Technically this is a violation; however, Ms. Nichols did not believe that any manufacturer warranty remained on the vehicle at the time she purchased it.

The Dealer did mistakenly suggest to Ms. Nichols that the vehicle might still be under the manufacturer warranty when she subsequently returned to the Dealer complaining about the vibration noise in the rear end of the vehicle. He suggested that she take the vehicle to a Chevrolet dealer to see if the problem could be repaired under warranty. Ms. Nichols took the vehicle to a Chevrolet dealer and was told that the vibration noise was caused by a bad right front wheel bearing but that the manufacturer warranty had been cancelled due to the vehicle's salvage history. As an experienced dealer, one would expect that the Dennis Lott, the owner of Cadott Auto Sales, should have known that manufacturer warranties are usually cancelled for vehicles with a salvage history. However, Ms. Nichols suffered no loss as a result of this misinformation from the Dealer. Ms. Nichols subsequently returned to the Dealer and the Dealer replaced the front wheel bearings, the necessary repair indicated by the Chevrolet dealer, at no cost to Ms. Nichols. Based on the evidence presented at the hearing, the Preliminary Determination is modified and the claim filed by Ms. Nichols against the bond of the Dealer is denied.

FINDINGS OF FACT

1. Cadott Auto Sales (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.10, Stats. The Dealer's facilities are located at 433 East Chippewa Street, Cadott, Wisconsin.

2. The Dealer has had a surety bond in force from April 1, 1997 to the present date. (Bond No. LP72089 from Capitol Indemnity Corporation, Madison, Wisconsin.)

3. On February 26, 1999, Maryann Nichols purchased a 1996 Chevrolet Cavalier, vehicle identification number 1G1JC524477290692, from the Dealer. Ms. Nichols paid \$6,827.50 including tax and registration for the vehicle.

4. On the Wisconsin Buyers Guide, the Dealer disclosed that the vehicle title was branded as "Rebuilt Salvage." The Dealer further disclosed that no problems or defects were discovered during the presale inspection of the vehicle and that the vehicle equipment was all legal. The Dealer specifically disclosed that there were no corrective welds or other evidence of repairs to the strut tower, floor pan, frame or structural portion of the unibody. The Dealer also included a used vehicle service discount agreement with the vehicle. The used vehicle service discount agreement was in effect for one month after the date of purchase of the vehicle and entitled Ms. Nichols to a 50% discount from the Dealer's regular prices for all parts, accessories and labor furnished by the Dealer in the repair of the vehicle.

5. At the time that Ms. Nichols purchased the automobile, she heard a vibration noise. A few months after the purchase the vibration noise got worse so she took the vehicle back to the Dealer. The Dealer told her the noise was caused by the muffler and he replaced it. The vibration noise continued to worsen so Ms. Nichols again complained to the Dealer. According to Nichols, the Dealer told her that the vehicle might still be under the manufacturer warranty since it only had 34,000 miles on the odometer. On July 29th, Ms. Nichols took the vehicle to Toycen Motors, a Chevrolet dealer, to have it repaired under the terms of the warranty.

Toycen Motors diagnosed the vibration noise as being caused by a bad right front wheel bearings; however, Toycen Motors also informed Ms. Nichols that the manufacturer warranty had been voided because of the vehicle's salvage history. Ms. Nichols took the vehicle back to the Dealer and he agreed to replace the front wheel bearings at no cost to Ms. Nichols. After the wheel bearings were replaced, the vibration noise was still noticeable. Ms. Nichols then took the vehicle to Southworth Chevrolet in Bloomer. Southworth Chevrolet gave Ms. Nichols a list of problems it discovered with the vehicle. The following defects were listed:

- Exhaust bent.
- Uniframe supports bent.
- Brake wires cut.
- Motor mounts bend and cracked.
- Engine splashguard bent and cracked.
- Radiator support welded.
- Transmission case cracked.
- Bodyline didn't match up.
- Rear axle bent.
- Coolant leak.
- Air Conditioner bracket bent.

Southworth Chevrolet estimated the cost to repair the vehicle was \$7,000.00.

6. On August 30, 1999, Ms. Nichols filed a complaint against the Dealer with the Department of Transportation—Dealer Section (Dealer Section). On November 16, 1999, the investigator for the Dealer Section inspected the automobile at the Dealer's facilities. As a result of his inspection, the investigator found the following:

- Corrective welds and bends on passenger side radiator support;
- Uniframe was bent and had corrective welds;
- Inner fender bent on passenger side;
- Motor mounts were bent;
- The rear axle appeared to be bend.

7. The investigator was unable to negotiate a settlement of the complaint and on December 2, 1999, Ms. Nichols filed a claim against the surety bond of the Dealer. The claim is in the amount of \$7,000.00, the estimate of the cost to repair the vehicle; however, in her claim, Ms. Nichols indicates that she would like the Dealer to repurchase the automobile from her.

8. The Dealer did disclose on the Wisconsin Buyers Guide that the title of the automobile was branded as "Rebuilt Salvage." The Wisconsin Buyers Guide further disclosed that the Dealer was aware of no "Corrective welds or other evidence of repair to strut tower, floor pan, frame or structural portion of the unibody" of the vehicle. Evidence presented at the hearing showed that the only welds made as part of the collision repairs to the vehicle were to the radiator supports. No corrective welds were made to any of the structural components of the vehicle. The Dealer properly disclosed the condition of the vehicle on the Wisconsin Buyers Guide and no violation of sec. Trans 139.04, Wis. Adm. Code, was committed in this transaction.

9. After Ms. Nichols returned to the dealership several times with complaints about the condition of the vehicle, the Dealer also told her that the automobile may still be under the manufacturer warranty and she could have the problems repaired at a Chevrolet dealership. Ms. Nichols then took the vehicle to Toycen Motors and was advised that the manufacturer warranty had been cancelled. The Dealer did not disclose on the Wisconsin Buyers Guide or indicate on the purchase contract that any manufacturer warranty remained on the automobile; however, he also did not disclose that the manufacturers warranty had been cancelled due to the vehicle's salvage history. The Dealer's failure to disclose the fact that the manufacturers warranty had been cancelled on the Wisconsin Buyers Guide constitutes a violation of sec. Trans 139.04(6)4, Wis. Adm. Code, and the Dealer's failure to provide this information in the purchase contract constitutes a violation of sec. Trans 139.05(2)(f), Wis. Adm. Code. However, Ms. Nichols did not sustain any loss as a result of this violation because the Dealer subsequently performed the repairs Toycen Motors indicated were necessary to eliminate the vibration noise at no cost to Ms. Nichols.

10. Ms. Nichols filed a claim against the Dealer's bond on December 2, 1999. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity bond was in effect.

Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Section Trans 140.21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within three years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

To allow Ms. Nichols' claim, a finding must be made that Cadott Auto Sales violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by Ms. Nichols. The only violation found is that the Dealer failed to expressly disclose on the Wisconsin Buyers Guide that the manufacturer warranty for the vehicle had been cancelled due to the vehicle's salvage history. However, as discussed in the Findings of Fact, Ms. Nichols sustained no loss as a result of this violation. Additionally, it should be noted that at the time she purchased the vehicle from the Dealer, Ms. Nichols did not believe that it was still covered by the manufacturer warranty. She only investigated whether it was still covered several months later when the Dealer suggested it. Accordingly, Ms. Nichols negotiated a purchase price for the vehicle under the assumption that the vehicle was being sold without any warranty other than the Dealer's used vehicle service discount agreement.

CONCLUSIONS OF LAW

1. Maryann Nichols' claim arose on February 26, 1999, the date she purchased the subject automobile from Cadott Auto Sales. The surety bond issued to Cadott Auto Sales by Capitol Indemnity was in effect at this time. The claim arose during the period covered by the surety bond.

2. Ms. Nichols filed a claim against the motor vehicle dealer bond of Cadott Auto Sales on December 2, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Ms. Nichols' loss was not caused by an act of Cadott Auto Sales which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to sec. Trans 140.21(1)c, Wis. Adm. Code, this claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Maryann Nichols against the motor vehicle dealer bond of Cadott Auto Sales is DENIED.

Dated at Madison, Wisconsin on August 10, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.